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SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT
APPEAL No. 2019AP001479

STATE OF WISCONSIN EX REL. CITY OF WAUKESHA,

Petitioner-Respondent-Petitioner,

v.

CITY OF WAUKESHA BOARD OF REVIEW,

Respondent-Appellant,

SALEM UNITED METHODIST CHURCH,

Interested Party-Respondent.

Review of the Decision of the Court of Appeals, District II,
dated November 18, 2020

LEAGUE OF WISCONSIN MUNICIPALITIES' AMICUS CURIAE BRIEF

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3 Rathkopf's THE LAW OF ZONING AND PLANNING § 57:24 (4th ed.).....5

U.S. Dep't of Commerce, Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations § 7 (1926) available online at <https://www.govinfo.gov/content/pkg/GOVPUB-C13-18b3b6e632119b6d94779f558b9d3873/pdf/GOVPUB-C13-18b3b6e632119b6d94779f558b9d3873.pdf>.....5

2021 Wisconsin Guide for Property Owners, p. 27, available online at <https://www.revenue.wi.gov/DOR%20Publications/pbo60.pdf>

INTRODUCTION

The League of Wisconsin Municipalities (League) is a non-profit, non-partisan, voluntary association of cities and villages cooperating to improve local government. The League's current membership consists of 189 of Wisconsin's 190 cities and 404 of Wisconsin's 414 villages. The League sought permission to file a non-party brief because we believe the court of appeals erred when it interpreted Wis. Stat. § 70.47(13) as precluding the City of Waukesha from seeking certiorari review of a determination of its board of appeals. For the reasons stated below, we urge this Court to reverse the court of appeals.

ARGUMENT

The court of appeal's statutory interpretation of § 70.47(13) establishes the board of review, in instances where a property owner does not seek certiorari review of the board's determination under that statute, as the final arbiter of whether its actions were (1) within its jurisdiction; (2) according to law; (3) arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) supported by evidence such that the board might reasonably make the determination in question. The practical effect of the court's decision is to insulate all errors made by boards of review in favor of property owners, no matter how sizeable, from court scrutiny provided the

property owner does not challenge the board's determination; a property owner is unlikely to challenge errors made in their favor.

The League believes the court of appeal's statutory interpretation of §70.47(13) is erroneous. In interpreting 70.47(13), the court ignored that the plain language of the statute does not preclude a municipality from seeking certiorari review and, looking to the statute as a whole, gave undeserved and significant weight to other parts of § 70.47. Moreover, it misconstrued the board of review statutory scheme as one intended to protect individual taxpayers rather than as one intended to protect all taxpayers by securing an equitable assessment of all the property in the taxation district. The court's erroneous interpretation insulates board of review errors favoring property owners from court scrutiny and protects individual taxpayers at the expense of all other taxpayers. This is an unreasonable result.

THE COURT OF APPEAL'S INTERPRETATION OF WIS. STAT. §70.47(13) GIVES SIGNIFICANT AND UNDESERVED WEIGHT TO OTHER PARTS OF WIS. STAT. § 70.47 AND INSULATES BOARD OF REVIEW ERRORS FAVORING PROPERTY OWNERS FROM COURT REVIEW WHICH IS AN UNREASONABLE RESULT.

The parties and the court of appeals accurately summarize the rules of statutory interpretation. In the interest of avoiding unnecessary repetition, we do not recite those rules here but refer to steps within the understood and agreed-upon framework as necessary.

The parties and the court of appeals all agree that Wis. Stat. § 70.47(13) is unambiguous. However, they disagree as to the correct interpretation of the statute. A statute is not ambiguous simply because the parties, the circuit court, and the court of appeals disagree as to its meaning; rather, a statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses. *Teschendorf v. State Farm Ins. Companies*, 2006 WI 89, 293 Wis. 2d 123, 717 N.W.2d 258. The League agrees the statute is unambiguous; we agree with the City that the court of appeals erroneously interpreted it.

Recognizing that analysis must begin with the language of the statute itself, the court examines Wis Stat. § 70.47(13) and acknowledges that the plain language does not expressly state that only the taxpayer may seek certiorari review of the board's determination. The court nonetheless concludes that § 70.47(13) is "clear" in prohibiting the City from seeking certiorari review after looking to other provisions in § 70.47. Although it is appropriate for the court to interpret statutory language not in isolation but as part of a whole, in relation to the language of surrounding or closely-related statutes, the court must interpret the language reasonably to avoid absurd or unreasonable results.

The court gives significant weight to the fact that 70.47(13) only mentions the taxpayer, and makes much of the fact that § 70.47(12)

does not require that the city be provided notice of the board's decision or of appeals rights and procedures. Additionally, the court notes that the fact that § 70.47(11) designates the taxation district as a "party in interest" in all proceedings before the board to "secure or sustain an equitable assessment of all the property in the taxation district," implies the taxation district is not a party in interest elsewhere in the process. In ¶ 40, the court of appeals says "had the legislature intended to allow the City to take a certiorari appeal [from the BOR], it could have said so. It clearly knows how, as it has done so in other statutory schemes." As evidence, the court points to 62.23(7)(e)¹⁰ which grants certiorari appeal rights in zoning cases to "[a]ny person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any other officer, department, board or bureau of the municipality."

We agree with the City's arguments. Mention of only the taxpayer in § 70.47(13) is insignificant because it is only in relation to when the taxpayer receives notice of the board's determination, as a measure of the time for appeal. We agree that the legislature would find it unnecessary to statutorily require that the taxation district be notified of the board's determination and of the procedures for appeal. We believe the expression of the taxation district's interest in securing or sustaining equitable assessment of all the property in the taxation district before

the board of appeals should not be read as meaning that goal and interest do not exist in all other areas of the assessment process, outside of board of review proceedings. In specifying who is authorized to seek certiorari review under § 70.47(13), the legislature could have limited certiorari review to the property owner just as easily as it could have included the municipality. Although the legislature did adopt the language in 62.23(7)(e)¹⁰ cited by the court of appeals, that statute has absolutely no relation to the assessment statutes. Moreover, that language comes directly from § 7 of the Standard State Zoning Enabling Act, first published in 1924 and revised in 1926 and has been in the Wisconsin statutes since zoning was adopted in Wisconsin. Most zoning statutes following the general form of the Standard State Zoning Enabling Act, provide that appeals may be taken to a board of appeals (the enabling act referred to a board of adjustment) by "any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer" performing an act relating to the zoning ordinance. 3 Rathkopf's THE LAW OF ZONING AND PLANNING § 57:24 (4th ed.). See U.S. Dep't of Commerce, Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations § 7 (1926), available online at

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THE COURT OF APPEALS MISCONTRUES THE BOARD OF REVIEW STATUTORY SCHEME AS LEGISLATIVE INTENT TO PROTECT INDIVIDUAL TAXPAYERS RATHER THAN PROTECT ALL TAXPAYERS BY SECURING AN EQUITABLE ASSESSMENT OF ALL THE PROPERTY IN THE TAXATION DISTRICT, AN INTERPRETATION THAT UNREASONABLY PROTECTS INDIVIDUAL TAXPAYERS AT THE EXPENSE OF ALL OTHER TAXPAYERS.

The court of appeals acknowledges that the goal of statutory interpretation is to give effect to the legislature's intent and that it must interpret statutory language considering the scope, context, and purpose of the statute. However, the court of appeals, and oddly the Board of Review, intently focus on protection of the individual taxpayer given the opportunity the municipality has for input into the assessment process by appointment of the assessor and designating the type of board of review (constituted of citizens or officials) and appointing the members.

The League submits that in examining the board of review statutory scheme, the court of appeals unduly focused on the "burdens" imposed on the individual taxpayer¹ forced to jump through hoops (e.g.,

¹ The Board of Review feeds into this too, in its foray into legislative history and extrinsic sources, noting taxes "as a source of antagonism" that led to tea in the Boston Harbor, and spilled blood. Although it may not be directly relevant to the issue at hand, as an association of cities and villages, the League can't resist noting

filing objections within short deadlines, providing their own estimate with supporting evidence, and presenting their case to the board with a presumption in favor of the assessor's valuation). The League agrees that protecting the individual taxpayer is important, but the primary focus and intent of the board of review is to ensure that taxation in the district is fair and equitable as a whole.

In addition to hearing individual objections, boards of review are responsible for carefully examining the tax roll or rolls, correcting all apparent errors in description or computation, and adding all omitted property. Wis. Stat. § 70.47(6). In all proceedings before the board the taxation district shall be a party in interest to secure or sustain an equitable assessment of all the property in the taxation district. Wis. Stat. § 70.47(11).

What happens when a board of review reduces one property owner's assessment? According to the Board of Review, it is no big deal because the levy stays the same. According to the Board, the City suffers no harm because it gets to collect the same amount of money -- Here's the harm -- to the integrity and fairness of the system as a whole. The

that the framework of taxation in the United States and Wisconsin is not taxation without representation. Instead of the King imposing taxes, we have municipal officials, elected by residents, who are tasked with making difficult decisions about how to fund and provide services that residents want. Although it's probably true that most people don't like paying taxes, it's probably equally true that people appreciate when the garbage collector pulls up at the curb to haul their garbage away, or when the snow plow removes snow from the streets so they can go about their business, or when police and fire show up in response to calls for help.

tax rate is derived by dividing the total amount of the tax levy by the total assessed value of the taxing district.² Although the levy stays the same, when the board of review reduces an assessment, the tax base decreases. This means the tax rate has to be increased to levy that same amount of money. If the board of review reduces one property owner's assessed value then, assuming all other assessed values remain unchanged, the only way to collect the same total levy is to increase the tax rate (mill rate). So each taxpayer is forced to pay more to cover the amount in value reduced by the BOR. That means that all of the other property owners whose assessed value has not changed will pay a higher tax in order for the different taxing jurisdictions to collect the same total tax levy. If the Court concludes that the municipality may not appeal the Board of Review's decision, then the Court leaves it to individual taxpayers, rather than the municipal government, to monitor what a board of review does, and requires that individual taxpayers take it upon themselves to appeal determinations that are against their own financial interests. This is unlikely to happen. Individual taxpayers are not paying attention to what happens at the board of review, and if they were, would likely determine that the cost-benefit analysis of mounting a legal challenge to protect their own financial interest would be far

² For a good explanation of the tax base and the tax rate and good illustrations of how each are affected, see p. 27 of *2021 Wisconsin Guide for Property Owners*, p. 27, available online at <https://www.revenue.wi.gov/DOR%20Publications/pbo60.pdf>

greater than the actual impact on any one individual taxpayer's bill. And it is quite unlikely that taxpayers would collaborate in large enough numbers to mount legal challenges make the cost-benefit analysis make sense for them to incur the cost of challenging these decisions. The legislative intent behind Wisconsin's taxation scheme and the focus of the Board of Review statutory scheme is more concerned with the fairness of the system overall than protecting individual taxpayers. Because the court of appeals focused on protecting the individual taxpayer, its resulting interpretation leads to unreasonable results.

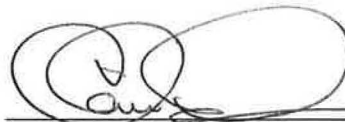
CONCLUSION

For the reasons stated above, we urge this Court to hold that Wis. Stat. § 70.47(13) allows municipalities to seek certiorari review of board of review determinations and reverse the Wisconsin Court of Appeal's decision in this case.

Respectfully submitted June 15, 2021.

League of Wisconsin Municipalities

By:



Claire Silverman (State Bar #1018898)

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of the brief is 2090 words.

I further certify that the electronic brief submitted in compliance with the requirements of sec. 809.19(12) is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate is included with the paper copies of this brief filed with the Court and mailed this day to all parties.

Dated: June 15, 2021.

A handwritten signature in black ink, appearing to read 'Claire Silverman', is written over a horizontal line.

Claire Silverman